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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

C.B.,

Petitioner

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G057381

(Super. Ct. Nos. 16DP1205A;
16DP1205B; 16DP1206A;
16DP1206B; 16DP1207A;
16DP1207B; 16DP1222;
16DP1222A; 16DP1222B.)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Writ petition denied.

Donna P. Chirco for Petitioner.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre,
Deputy County Counsel, for Real Party in Interest, Orange County Social Services
Agency.

Law Offices of Harold LaFlamme and Yana N. Kennedy for Real Parties in
Interest, the minors

* * *

In 2016, the Orange County Social Services Agency (SSA) brought into protective custody Ch.B.'s (Mother) five children, Ga.B. (16 years old),¹ F.B. (13 years old), G.B. (11 years old), A.B. (10 years old), and C.B. (5 years old). Over the course of two years, the court has twice returned the children to Mother with family maintenance plans, which did not last long. In February 2019, the court sustained a Welfare and Institutions Code section 387 supplemental petition regarding the children (all further statutory references are to the Welfare and Institutions Code). Thereafter, the court refused to order additional services based on evidence Mother attempted to abduct the children. (§ 361.5, subd (b)(15) [authorizing court to bypass services in abduction cases because reunification efforts futile].) It also ruled additional services were not in the children's best interests and scheduled a permanency planning hearing (§ 366.26).

In this writ petition, Mother challenges the applicability of the bypass statute, section 361.5, subdivision (b)(15), and asserts the evidence supported additional family reunification services. We conclude use of the bypass statute was untimely applied in this case, but nevertheless, we affirm the trial court's ruling for other reasons. For over 24 months, the children have endured unstable and chaotic lives, changing schools, motel/hotel residences with Mother, group homes, and foster home placements.

¹ Originally, SSA's petition included the siblings' older sister Ga.B. (Sister), who was then 16 years old. When Sister reached the age of majority, she was no longer a subject of the dependency petition. Accordingly, she is not one of the real parties in interest in this writ petition.

The court correctly determined it was time to shift focus away from family reunification and to the children's best interests, by scheduling a permanency planning hearing. We deny the writ petition.

FACTS

I. First Detention

In early November 2016, SSA filed a petition alleging the five minors were being physically abused by their father Gr.B. (Father).² He hit them with his hands and a belt. It was alleged all the children witnessed domestic abuse and symptoms of Mother's unresolved mental health issues. For several years, Mother and the children had been living in motels and were homeschooled. In October 2016, Mother was involuntarily hospitalized due to depression, psychotic behavior, and being non-verbal. Father had a history of substance abuse and a criminal history including vehicle theft. Mother's lengthy criminal history included arrests and convictions for carrying a firearm, disorderly conduct, prostitution, and indecent exposure. SSA amended the petition, removing some of the allegations of physical abuse involving Father.

The social worker noted there were three reports concerning the family when they lived in Hawaii. In October 2005, social workers placed seven children in protective custody after it was discovered they were living in a tent on a beach, "unattended in 'sweltering heat.'" The children did not attend school. The case closed in 2008 with the parents regaining custody of all the children except one (the parents' grandchild). He was adopted. In May 2009, Mother was incarcerated and Father refused to care for the children. The parents' adult child (Chr.B.) agreed to assume custody to prevent Hawaiian social services from taking the children into protective custody. There was a third report in April 2012, after Mother tested positive for marijuana. The family

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Father is not a party to this writ petition.

had been in a serious car accident. Mother, Sister, F.B. and A.B. were hospitalized. The family moved to Orange County in 2013

There were two prior SSA reports regarding the family in Orange County. In December 2014, the family was living in a motel and the report concerned an allegation of neglect. Mother could not provide the social worker with verification she enrolled the children in a homeschooling program. However, she was able to prove the children received medical care from a pediatrician. The second report, created in August 2016, noted the parents were married but no longer resided together. Father, also homeless, was suffering from mental health problems and collected garbage for a living. Mother allowed Father to use her shower occasionally, and this led to an incident of domestic violence in front of the children.

The most recent child neglect allegations, the subject of the underlying petitions, related to Mother's conduct after she and the children relocated in October 2016 to a new hotel in Santa Ana. The hotel staff noticed Mother was acting strangely and "making a scene" in the lobby. The manager asked Mother to leave and then called the police after suspecting Mother was using drugs.

A member of the Crisis Assessment Team (CAT) met with the family and opined Mother was suffering from and showing extreme signs of post-traumatic stress disorder (PTSD). He learned that approximately five years prior, a car struck the family as they sat at a bus stop in Hawaii. The collision killed one child. Because Halloween was the deceased child's favorite holiday, Mother was struggling emotionally.

Sister later told a social worker that Mother had "been trying to keep it together but today fell apart hard because of the holidays." The children told the social worker that when Mother did not sleep well she acted "weird." They believed she was previously taken to the hospital "just so that she could sleep" and she would be fine afterwards. One of the children reported that two days prior Mother laid down in the middle of the street and that event led to her hospitalization.

The CAT member suspected that during Mother's recent hospitalization she was placed on a psychiatric hold because she had multiple bruises on her arms, consistent with those caused by hospital restraints. During her hospitalization, the children were left alone in the hotel for a few days. The CAT member stated Mother became petrified and had to be restrained when the ambulance arrived. She was placed on a psychiatric hold and taken to the hospital. He described the children as being petrified.

The social worker interviewed Father, who confirmed he and Mother had been separated for several years and he was homeless. Father said he worked for a temp agency and was doing odd jobs to provide money for his family. He had limited contact with most of the children but saw his son G.B. every day. He explained Mother only let him see G.B. because "he's like me" and the other children were more like their Mother and stayed with her.

At the detention hearing, the court determined there was sufficient evidence to remove the children from their parents' custody. The court gave the parents liberal visitation while the children were placed at Orangewood Children's Home (Orangewood).

The social worker's next report, dated November 14, 2016, disclosed more details about Mother's hospital stay. Mother was placed on a section 5150 hold. She was moved from a crisis unit in Santa Ana to Royale Hospital because she stripped off her clothes and was running naked through the hospital. The hospital nurse reported Mother was "very psychotic requiring medication which sedated her." The hospital discharge paperwork recommended outpatient treatment to address Mother's major depressive disorder with recurrent and severe "psychotic symptoms." After her release, Mother reported she had needed similar hospitalizations in 1998 and 2002 when she lived in Las Vegas. Because Mother claimed she had never participated in a therapy program, the social worker referred her to one.

The jurisdiction/disposition report stated the children were living at Orangewood. The social worker provided more information about Mother's childhood and background. She noted that in addition to the five minors, Mother had three adult children; two sons who lived in Hawaii and a daughter who lived in Costa Mesa. Mother denied having any issues with drugs or alcohol. She blamed the children's paternal grandmother for making false child neglect reports to the social services agencies in Washington, D.C. and in Hawaii. Mother admitted Father forced her "into prostitution" when she was 22 years old after they moved to California. She alleged he was a drug addict and abusive.

The social worker observed Mother and the children were very close and supportive of each other. The children each reported the most important people in their lives were Mother and their siblings. They wanted to return to Mother's care as soon as possible.

The social worker opined the children needed the protection of the court because of Mother's unresolved mental health issues. She noted that although Mother no longer displayed psychotic behavior, "it appears that she may suffer from an undiagnosed condition which manifests itself in transitory psychotic episodes when under stress or due to lack of sleep."

The social worker noted that when asked about her mental health, Mother explained there were "historical factors involving [Father's] abuse and his purported intent of declaring her crazy and incompetent." Mother believed Father, Chr.B, and G.B. "all conspire[d] against her to keep her from sleeping by calling her in the middle of the night." The social worker opined Mother was "somewhat paranoid" about Father. The social worker noted the Hawaiian agencies had not yet provided the requested information about the prior dependency case.

The social worker reached the following conclusions: "The family has lived a stressful life, having lived in several states, and with frequent periods of

homelessness. Additionally, the family was involved in a hit and run accident causing the death of [one] sibling . . . as well as causing injuries to the other family members. What [was] working well [was] that the . . . parents . . . provided a stable life for the children over at least the past year and a half.” However, the social worker questioned whether Mother was still working as a prostitute to pay for the hotel, costing \$640 per week. She questioned if Father’s earnings and Mother’s aid through CalWorks was sufficient income.

With respect to the issue of education, the social worker concluded Mother’s excuse for not enrolling the children in school was “unacceptable” and she had deprived the children of an education. The teachers at Orangewood questioned how the children would be able to attend regular school, especially since G.B. and A.B. were three or four years behind on their schoolwork and would not qualify for special education services. The social worker noted Sister and F.B. were doing well in school. Sister appeared very mature and responsibly looked after her siblings. The social worker stated the children appeared to be close to Mother and very protective of her. On the other hand, the children claimed Father was abusive towards them. Sister reported Mother would not allow Father to visit Orangewood without Mother being present. At the end of her report, the social worker concluded additional information was needed about Mother’s mental health before the children could be returned to her care. She recommended a case plan that included therapy.

The following month, in an addendum report, the social worker noted Sister and F.B. remained at Orangewood and the other siblings were moved to New Alternatives/Sibling Assessment Facility (New Alternatives) in Costa Mesa. Mother told the social worker she wanted the children to attend school in Newport Beach, because that city had better schools than Costa Mesa. The social worker explained the children would attend school close to where they lived. Mother asserted she had “maxed out” two credit cards to live in Newport Beach motels for the schools.

In addition, Mother stated she was not ready for all the children to return home, saying the older girls were demanding and pushy and the boys gave her trouble. She wanted C.B. returned home first. She told the social worker G.B. was abused while in Hawaiian foster care, and his behavior was “so extreme that she didn’t know how she could deal with him, and that was why she would often send him to stay with [Father].”

Mother’s therapist left a voice message for the social worker and explained he did not expect to see Mother again. At their last session, the therapist asked Mother to sign a release of information and she ripped it up. The social worker noted Mother tested positive for Cannabinoid 20 and CarboxyTHC on two occasions in November 2016.

In an addendum report, prepared in January 2017, the social worker noted Sister and F.B. were moved to a residence facility in Orange. The other children still resided at New Alternatives. There had been an incident during a recent visit with the children where it became apparent Mother treated G.B. differently than the other children. G.B. believed Mother hated him and he expressed a very negative outlook about himself. The social worker conceded G.B. had behavioral issues and offered Mother a longer parenting class. Mother stated she did not have the time because she was looking for employment. Mother also conveyed she was upset the children were given cough medicine and were enrolled in therapy. The social worker determined future visits would need to be monitored.

Mother’s new therapist, LaTonda Hardy-Davis, e-mailed the social worker to report Mother did “not meet medical necessity for continual counseling services.” Davis stated she was having difficulty creating a treatment plan to meet the contract requirement because Mother did not exhibit any safety concerns. Davis explained Mother was not suicidal, homicidal, homeless, addicted to drugs, intellectually challenged, or otherwise unable to carry out daily functions. Davis recommended Mother have a psychiatric evaluation because of the prior section 5150 hold, but noted Mother did not currently present any section 5150 risk. She noted Mother was not currently

impaired and most clients with mental health issues had ongoing problems. Davis recommended Mother and the children participate in family therapy with a different therapist. She concluded Mother should be discharged from personal therapy.

Two assistant program managers at New Alternatives reported the staff were “becoming increasing[ly] uncomfortable with [Mother because she was] asking the staff for their first and last names, and asking them if they’ve ever been sued[,] and that her first amendment rights [were] being violated.” Mother was hostile and agitated during visits. The managers reported that the children, after visits with Mother, were “more disrespectful towards their guidelines.” The two boys, G.B. and A.B., were “so disruptive to their entire household that [the staff was] concerned about their continued placement there.” The social worker stated the children may require the help of a Therapeutic Behavioral Services (TBS) coach or mentor.

The social worker consulted with her supervisor and a Conditional Release to Intensive Supervision Program (CRISP) supervisor about the case. They advised her to obtain more information about Mother’s mental state and to ask Mother’s therapist for an updated safety assessment to determine if Mother posed a risk to the children. They considered the possibility of a CRISP release of the two oldest children (Sister and F.B.).

At the end of January 2017, the court granted SSA’s request for a section 730 psychological/psychiatric evaluation for Mother. The social worker prepared another addendum report, stating Mother agreed to enroll the children in school and look for an apartment. On a less positive note, C.B.’s placement facility determined Mother would no longer be permitted to have visits there because she was disruptive. Visits were moved to SSA’s Eckhoff office.

In early February 2017, the social worker recommended that Mother resume drug testing. In addition, she opined the two oldest girls (Sister and F.B.) should be transitioned to Mother’s care under a CRISP release as long as “Wraparound Services” were in place and the girls attended school.

The hearing was continued, and in her next report, the social worker noted SSA removed G.B. and A.B. from their placement at New Alternatives. G.B. was assaultive towards staff and peers, especially at bedtime. He refused to attend school and threatened to kill himself. A.B. was disruptive and he punched another child. SSA placed the boys in Orangewood, while C.B. remained behind at New Alternatives.

In March 2017 (five months after the children were initially removed from Mother's care), the court held a jurisdictional hearing and considered testimony from the social worker. The court determined the allegations of the amended petition were true. It scheduled a disposition hearing. Sister and F.B. were returned to Mother under a CRISP release. Soon thereafter, Sister was returned to Orangewood. The social worker explained Sister had engaged in self-harm, by making cuts on her arms. She was referred to counseling and she asked the social worker to remove her from Mother's care because she was worried Mother would not be able to deal with the additional stress of her cutting.

In April 2017, the social worker reported she attended a Placement Barriers Meeting (PBM) at Orangewood regarding Sister, G.B., and A.B. The boys had "concerning behaviors." They were physically aggressive, assaultive, and defiant. They used profanity, caused havoc at bedtime, and refused to go to school. The PBM members determined the boys needed Short Term Residential Treatment Program (STRTP) services and perhaps separate placements. As for Sister, their plan was foster care.

During a Wraparound team meeting for the children, the social worker reported there was some good news. The boys had a "Youth Partner" who was taking them out for temporary releases and the team was looking for private tutors for both boys. G.B. had 10 days of good behavior. F.B. was regularly attending school. Mother was attending therapy.

The more disheartening news was that Mother owed a large fine (\$3,000) to the Department of Motor Vehicles (DMV). The team asked for written verification of the

finer to permit Wraparound to help her with rent payments. Mother stated she was paying \$80 per night for a hotel using money from Father. She claimed Father gave her \$8,000 to pay the DMV fines, and she would use the bus to travel with the children. She refused to give the Wraparound team a copy of her budget, which meant the team could not assist with any funding shortfalls. The team could not pay Mother's rent or for training programs if Mother claimed she could pay for what she needed. Mother also indicated she found a two-bedroom apartment in Newport Beach for \$2,400 a month and she would not consider living anywhere but Newport Beach or Beverly Hills.

At the end of March, the Orangewood staff reported a disturbing event involving G.B. and Mother. G.B. disclosed that Mother told him the only reason she visited Orangewood was to see A.B. Moreover, G.B. believed Mother wanted to kill him. He explained Mother told him that "she would easily grab [A.B.] and walk out of this place, and blow it up, leaving [G.B.] and [Sister] here." G.B. was tearful when he revealed this story and asked to stop having visits with Mother. The social worker stopped visits between G.B. and Mother.

In her concluding remarks, the social worker expressed concern about Mother's ability to provide the children a safe and stable home. Mother insisted on living at a hotel costing \$80 per night, and refused offers for assistance with rent and DMV fines. Mother needed to pay the DMV to regain her driver's license. Mother refused to verify her income and insisted Father was giving her money. The social worker was concerned about Mother's source of income due to her lengthy criminal history of prostitution, with multiple arrests dating back to 1993. The social worker recommended that the court should continue family reunification services. Because F.B. was doing well in Mother's care and attending school regularly under a CRISP release, the social worker recommended those services should continue.

The case was continued and Mother regained custody of A.B. and C.B. under a CRISP release. In early April, G.B. was placed in a group home in Temecula.

The social worker submitted an updated case plan. At the dispositional hearing, the court agreed with the social worker's recommendation. In summary, the court returned F.B., A.B., and C.B., to Mother with a court plan of family maintenance. G.B. lived in a group home. Sister remained at Orangewood.

In July 2017, the social worker filed a report recommending a 60-day trial visit for G.B. and Sister. Sister was showing signs of depression and was having suicidal thoughts. She failed placement due to misconduct; she was running away, putting herself in dangerous situations, drinking alcohol, and smoking marijuana. The social worker concluded Sister would "be better off in the care of [Mother], despite her wishes to not return home." The social worker believed Sister was using the system to have more freedom, knowing there were "little consequences" for her behavior from SSA. As for G.B., his group home reported he had made good progress and he was getting along better with his peers. He was better able to "de-escalate and accept being re-directed." The social worker stated Mother needed a new referral for therapy, but she was participating in Wraparound Services and receiving income from the Welfare to Work program. This program would provide child care while Mother looked for work. The court agreed with the social worker's recommendation. It returned G.B. and Sister to Mother's care for a 60-day trial visit.

At the end of August 2017, the social worker recommended the children remain with Mother. She reported the children appeared "safe and happy" and there were no child abuse reports. Mother had stopped therapy. The children were registered to attend school. The social worker concluded that although Mother was only "minimally participating in services" the children were doing well in her care.

The social worker met Mother and the children in their motel room. The children were happy, relaxed, and engaging. All of the children liked their new schools, except Sister who was focused on graduating. Both Mother and Sister questioned the need for additional therapy. In her mother's care, Sister was emotionally stable and had

stopped running away. The social worker observed Mother was “able to effectively manage herself and the children in her care.”

At the next hearing, held in September 2017, the court returned G.B. and Sister to Mother’s care under a plan of family maintenance and scheduled a six-month review hearing.

The following month, the social worker recommended the court continue family maintenance services with respect to G.B. and Sister, and close the dependency case concerning F.B., A.B., and C.B. The family moved to a different motel in Newport Beach, and Mother was able to meet the needs of her family. She received income through CalWorks and food stamps. Mother was scheduled to begin a two-week employment training program. The social worker submitted updated information regarding each child, indicating they liked school, were physically healthy, and were emotionally doing well. Mother and the children expressed their desire to have the entire dependency case terminated.

At the October 4, 2017, hearing, the court continued with the plan of keeping Sister and G.B. in Mother’s care under a plan of family maintenance. It terminated the dependency proceedings as to the other children.

II. Second Detention

On December 1, 2017, SSA took the children into protective custody because Mother was hospitalized. Police officers dispatched to the family’s motel reported Mother appeared mentally ill or under the influence, and she requested medical attention due to leg pains. The police transported the children to Orangewood.

Mother was released the following day and reported she did not have a psychotic episode. Rather, the doctors diagnosed her with a condition called “Thyroid Storm.” The social worker looked online and determined this was a life threatening condition for people with hyperthyroidism. She reported a Thyroid Storm would be triggered when the thyroid gland released a large amount of hormone in a short period of

time. The symptoms included sleeplessness, confusion, high heart rate, high blood pressure, and elevated body temperature. Mother indicated the hospital gave her medication and she had a follow-up appointment.

The social worker interviewed F.B. and Sister. Both children indicated they suspected Mother was not feeling well because she had not slept for three nights. Sister stated it appeared that Mother was not processing what was being said to her. All the children stated they wanted to return home to Mother.

In addition to the problems created by her medical condition, Mother admitted she was having difficulty coping with the older children because their behavior was “out of control.” She stated all the children, except C.B., challenged her authority, defied her, and were unmanageable. Mother reported Orangewood informed her Sister had recently run away from the facility. She suspected Sister would be in Tustin with her boyfriend, a boy she previously met at Orangewood. Mother also asserted she asked Chr.B. to stay with the children while she sought medical attention, but Chr. B. declined to help after she was contacted by the police. Mother stated she would like her two youngest children, C.B. (now six years old) and A.B. (now 11 years old) returned to her care because they were well behaved.

On December 4, 2017, SSA filed a section 300 petition regarding F.B., A.B., and C.B. The petition raised allegations under section 300, subdivisions (b)(1), (g) and (j) (for failure to protect, no provision for support, and abuse of sibling). SSA filed a section 387 supplemental petition regarding Sister and G.B., because their dependency case had not been terminated at the last hearing. At the detention hearing, the court placed the children in the protective custody of SSA and ordered monitored visitation for Mother.

In the social worker’s jurisdiction/disposition report, dated January 4, 2018, the social worker recommended Mother receive reunification services. All the children, except for C.B. were living at Orangewood. C.B. was residing at New Alternatives. The

social worker interviewed Sister, who promised she would not run away from Orangewood again. She disliked Orangewood but she also realized it was unfair to leave her siblings there on their own. She requested placement with F.B.

The social worker also interviewed Mother, who stated she was not currently taking medication despite the hospital discharge paperwork discussing prescribed medication. Mother stated her diagnosis was “Grave’s Hyperthyroidism.” She claimed her hormone levels were now normal. She believed her levels were high in 2016, and it was likely she could have avoided the section 5150 hold if she had allowed the hospital to collect a blood sample at the time. Mother stated she could feel certain symptoms when her thyroid was overactive. Mother refused to give SSA authority to review her medical documents. The discharge paperwork indicated Mother left the hospital on December 1, 2017, against medical advice.

The social worker concluded Mother gave inconsistent statements about her mental health. She denied having mental health issues, but also admitted to past involuntary psychiatric holds. She claimed to be aware of hyperthyroid symptoms, but she could not explain her erratic behavior on December 1.

Mother moved to an Anaheim motel, where she could be closer to the children. She disliked having social workers closely monitoring her interactions during visits with the children. She claimed the children were angry the social workers were interfering. Mother also believed she was ““done with all”” the services in her case plan. She claimed to have attended therapy and parenting classes. Mother was unemployed.

The social worker concluded there were grounds to detain the children. “[Mother] has been unwilling to participate in drug testing, enroll in parenting, have a mental health evaluation conducted, or sign a release of information for her medical providers. [Mother] has yet to provide adequate medical documentation to support her statements that her behaviors are related to her physical health rather than her mental

health.” The social worker recommended the court sustain the allegations in the amended petition and provide Mother reunification services.

The case was continued, and the social worker filed an addendum report on January 17, 2018. She discussed what had transpired during several conversations with Mother. For example, after a mix-up with the children’s chiropractor appointment, Mother screamed, ““You fucking bitch, I will fucking kill you. I know you did this shit on purpose””

Mother eventually provided copies of her medical records. The social worker noted Mother was treated for hyperthyroidism, but there was evidence of other problems. Mother underwent a suicide assessment and the notes indicated the following: ““[D]isorganized or delusional thought process; admitted for acute emotional, behavioral, psychotic crisis; neglecting appearance or hygiene; Patient at risk for suicide and risk status communicated to physician.”” There were notes in Mother’s medical records stating she was anxious, restless and talking to herself in the hospital. An hour later, another note indicated Mother was restless, unpredictable, and ““ha[d] difficulty following direction due to disorganized thought process and responding to internal stimuli.”” The nurse needed to find someone to help her medicate Mother. The nurse was unable to obtain Mother’s blood pressure due to her ““restlessness and difficulty focusing.”” At one point Mother walked out of her hospital room and sat down in the hallway. She became agitated and was yelling. When she became more combative, ““swinging [her] arms at staff,”” they placed her arms in restraints. The record stated, ““[Patient] remains restless, fighting restraints, attempting to remove pants, and yelling.”” After fighting the restraints for several hours, Mother was able to talk and drink water. Chr.B. told the hospital staff that Mother’s deceased son would have celebrated a birthday around this time, and Mother had not been sleeping. Chr.B. opined the lack of sleep triggered the manic behavior, and indicated Mother had a prior similar incident.

The medical report section titled “Plan/Medical Decision Making Discussion” repeated Mother’s conduct in the hospital and noted she required chemical sedation and restraints. Because lab tests showed low thyroid hormone levels, the report author suspected “thyrotoxicosis versus thyroid storm.” Mother’s urine toxicology screen was positive for THC. The author concluded by stating, “I suspect some thyrotoxicosis exacerbated by either substance abuse or underlying psychiatric disease.” The social worker advised Mother to enroll in drug testing, parenting classes, and therapy, including a mental health assessment. Mother declined all these services. She stated the drug tests gave false positives, she already completed a parenting class, and she did not need a mental health assessment or counseling.

In addition to the above information, the social worker noted this was the third time the children had been removed from Mother’s care. The first time was in Hawaii, the second time was in October 2016, and the most recent removal was December 2017. The social worker stated the children were healthy, doing well in placement, attending school, and participating in appointments. She noted it was difficult to find appropriate placements because there was a “[s]chool of [o]rigin” order. The children indicated they were willing to change schools and move to a group home or foster home, rather than remain at Orangewood.

In February 2018, the court found true the allegations raised in the section 300 and section 387 petitions. Over county counsel’s objection, the court placed G.B., A.B., and C.B. in Mother’s care under a CRISP release. It ordered overnight weekend visits between Mother, Sister and F.B., who were living at different facilities. The court ordered Mother to participate in a section 730 evaluation.

In March 2018, the social worker recommended the court order that Mother receive additional reunification services with respect to Sister and F.B., and family maintenance services for the remaining siblings living with Mother. Mother did not want the children to speak with the section 730 evaluator. Mother claimed she never agreed to

participate in therapy. Mother accused the Hawaiian social services department of helping SSA take her children. She also maintained she orchestrated the most recent section 5150 hospitalization to generate documents proving she had a medical issue and was not psychotic.

The social worker wrote she reluctantly recommended the children remain in Mother's care. The social worker listed several reasons why she believed Mother had unresolved mental health issues. After a hearing on March 19, 2018, the court determined all five children were dependents of the juvenile court and they would remain in Mother's care under a plan of family maintenance supervision.

At the end of August 2018, the social worker recommended the court terminate the dependency proceedings with exit orders. The social worker noted Mother had been offered family reunification and family maintenance services for a total of 22 months. Although Mother refused to "engage[] in services," she stayed in contact and provided adequate life necessities to the children. The children attended school and received medical and dental care. The social worker acknowledged there had been two mental health crisis incidents requiring SSA intervention, however, it was difficult to determine what could prevent these incidents because of Mother's non-compliance with services.

The social worker concluded as follows: "The children have all reported that they feel safe in [Mother's care] and wish for their dependency to be terminated. There has been no new substantiated child abuse reports over this reporting period. The children are bonded to each other and to [Mother]. Despite [Mother's] lack of engagement of services there are no safety concerns regarding the children in their mother's care. The [social worker] does not feel that keeping [the case] open for another [six] months would benefit the mother or children."

III. *Third Detention*

On September 2, 2018, police officers took F.B., G.B., and A.B. into protective custody. The officer saw the three children walking by themselves along Newport Boulevard around 3:00 a.m. The children told the officer they were walking to a nearby gas station to use the restroom. They explained they had spent the night with Mother in her car. For over an hour, the officer attempted to contact Mother, and because she did not answer his telephone calls, the officer brought the children to Orangewood. The social worker notified the trial court that the location of Sister and C.B. was unknown.

The social worker interviewed the children later that day. Fifteen-year-old F.B. reported she had taken G.B. (13 years old) and A.B. (11 years old) to look for a restroom while Mother remained in the car with C.B. F.B. stated the police followed the children back to spot where Mother had parked, but she was no longer there. F.B. suggested Mother went to look for Sister, who had been staying with friends. The children denied living in the car, claiming they were waiting to check into a hotel. They each stated they felt safe living with Mother.

When the social worker interviewed Mother, she explained the family was in the car looking for Sister late in the evening and they parked because they had not yet checked into their next hotel room. She denied the family ever lived in her car.

Sister told the social worker she had been staying with friends. She claimed the family had been sleeping in the car but also resided in motels. Sister explained the family stayed in the car approximately three times a week when they did not have a motel room. She asserted Mother asked her to leave the family's motel room a few days earlier and would not let her return. Sister wanted to return to Mother's care, where she felt safe. She denied there was abuse or neglect.

On September 5, 2018, SSA filed a section 387 supplemental petition regarding F.B., G.B., and A.B., discussing the prior basis for jurisdiction as well as facts

concerning the latest allegation of neglect.³ The court detained the children and authorized six hours of supervised visits with Mother.

A little over a week later, SSA filed a supplemental 387 petition regarding Sister and C.B. In addition to the allegations raised in their siblings' petition, it was alleged police in Beverly Hills found seven-year-old C.B. alone at a car dealership. C.B. did not know Mother's location. Witnesses reported C.B. used the dealership's restroom and then refused to enter Mother's car because it was "too hot." Mother yelled at C.B. and gave the keys to a passerby as she walked away. Officers found Mother a few blocks away and she was hospitalized under a section 5150 hold due to her "extremely fragile state." In addition, the petition alleged Mother failed to enroll C.B. in school. With respect to Sister, who was now nearly 18 years old, the petition alleged Mother was not providing appropriate supervision. When Mother was hospitalized, Sister's whereabouts were unknown.

The court scheduled a detention hearing for all five children to take place on September 13, 2018. A new social worker was assigned to the case. She received an e-mail from the prior social worker, who recalled a conversation she had with Mother in late September 2018. Mother complained the children's behavior got worse every time they were taken by SSA. She said the children were demanding, threatening, and disrespectful. She explained the children would threaten to report her to SSA if she did not give them what they wanted. Mother asserted that after Sister announced she would never listen to her mother, Mother decided Sister, who was nearly an adult, should not return home and could [ruin] her own life. Mother revealed F.B., A.B., and G.B. had other contacts with the police the day before they were detained because they had been extremely disobedient at the mall. Mother asked a security guard to observe the family after F.B. threatened to punch the car window with her fist if Mother would not retrieve

³ Sister and C.B. were not named in this petition because they were not with their siblings at the gas station.

her phone. Mother admitted she told the children they could not come home if they “kept pushing it” because she was not feeling well, and if she had to choose between them and her health she was choosing herself.

In October 2018, visits between the children and Mother did not go well. Mother would become angry when the children would not interact with her. She complained about the long bus ride from Beverly Hills to SSA’s offices. She threatened to cancel visits and said she was only staying because C.B. wanted her there.

The social worker reported that after SSA re-detained the children, Mother made “minimal efforts” to visit or telephone them. She lived a transient lifestyle, staying in hotels in Beverly Hills or Anaheim. The social worker noted this type of unstable housing would not be conducive to keeping the children in schools if they returned to Mother’s care. Mother was unemployed and could not explain how she paid for the children’s basic needs. Mother blamed the children for the family’s circumstances and SSA’s involvement in their lives. Mother stated she only wanted F.B., A.B., and C.B., returned to her care. The social worker recommended the court sustain the supplemental petitions, declare dependency, and deny family reunification services.

In an addendum report, dated October 29, 2018, the social worker made the same recommendation. F.B. and C.B. were placed together in a foster home. G.B. and A.B. lived together at Olive Crest Tustin Family Campus foster facility (Olive Crest). The social worker stated the Children and Family Team (CFT) met to review placement and discuss visitation concerns. The team determined G.B. and A.B. should receive therapy and be placed in foster homes. Sister, who was 18 years old, was not part of the report. She became a nonminor dependent after her birthday, and she requested visits with her siblings.

IV. Mother’s Unsupervised Visit with the Children

On November 6, 2018, the social worker reported Mother absconded with the children on November 3. Sister had arranged a visit with her siblings that day at the

motel where she resided. When Mother knocked on Sister's door, Sister told Mother she was not allowed to be there. However, the children went outside with Mother. Sister returned to her room to retrieve shoes and when she went outside she realized Mother and the children were gone. Sister, who was very upset, called Orangewood to report the incident. Mother took the children on the bus to a fast food restaurant. G.B. reported he and his siblings went willingly with Mother. They were all sitting outside looking at F.B.'s cell phone when he realized Mother had left with C.B. G.B. was not surprised, but upset that Mother took only the youngest sibling. He said he was not worried about C.B., because she would be safe with Mother. The police collected the three minors and returned them to their foster homes. The social worker stated C.B.'s whereabouts were unknown but it was likely she was with Mother in Beverly Hills based on pictures Mother posted on Instagram.

The court issued a warrant for C.B. The social worker requested that the court order no family reunification services, noting the applicability of two bypass provisions (§ 361.5, subds. (b)(2), & (15)), and the rule limiting services past 18 months (§ 361.5, subd. (a)(3)(A)).

Meanwhile, the police arrested Mother on November 5, 2018, and SSA placed C.B. in Orangewood. The social worker contacted C.B.'s foster parents to pick her up. C.B. became distraught, expressing fear that the foster parent's puppy would attack her. She did not want to return to the foster home. She was placed in a different foster home.

On January 17, 2019, the social worker described Mother's first monitored visit with the children following her release from jail. The family greeted each other affectionately and enjoyed being together. It was a positive visit, and Mother asked each child about how they were doing. The social worker spoke with the children separately after the visit. They all said they were doing well except for G.B., who stated he did not like his new group home.

V. Section 387 Hearing

The hearing on the supplemental petitions took place over three days (January 17, 2109, February 4, 2019, and February 7, 2019.) The court considered testimony from the social worker and Mother and on February 8, 2019, considered argument from counsel.

On the abduction issue, the social worker testified the minors willingly went with Mother, but after they arrived at the restaurant, the three oldest children wanted to return to their placements. C.B. stayed with Mother. The social worker used the Costa Mesa and Beverly Hills police departments to help find C.B. The social worker did not believe Mother intended to return C.B. because they had plans to go shopping, eat, and get their nails done. The social worker stated the children shared a strong bond with Mother and wanted contact with her, however, it would not be in their best interests to continue giving Mother reunification services.

Mother testified about the September nighttime bathroom incident, saying the children left the car without her permission. They ignored her admonishment to stop and ran from her. She followed them in her car until she lost sight of them when they crossed the street and turned a corner. She stated she drove around the neighborhood looking for them with C.B. asleep in the car. She found out the police detained the children when F.B. called her. Mother claimed there were no other missed calls showing on her cell phone.

With respect to the incident involving C.B. at the dealership, Mother stated she did not remember giving her keys to anyone. She recalled standing across the street from C.B. but she was disoriented and unable to remember why she was separated from her child. Mother recalled she parked the car to go to their storage space. C.B. started screaming that she needed to use the restroom. Mother claimed C.B. ignored her directive to wait until they could find a better bathroom, and C.B. “stomped off” and used the restroom in the storage facility. Mother admitted she had a gap in her memory about

what happened next because she became confused and disoriented. She was taken to the hospital, where she stayed for a few days. Mother explained she suffered from hyperthyroidism. She could recognize in advance the symptoms before reaching the point of disorientation and passing out. Mother stated she usually called her adult daughter, Chr.B., to help and act as her backup.

Mother also testified about the alleged abduction. Mother stated she did not know the children would be visiting Sister that day. When Sister opened the door, the four children went to her. Mother claimed she initially did not ask them to leave, but rather told them it would not be a good idea. When they insisted, Mother stepped into the room and saw something that made her change her mind. She saw Sister and her boyfriend sitting on the sofa in a “stupor.” She saw drug paraphernalia on the table and that the room was dirty and messy. Initially F.B. refused to leave with Mother but eventually relented.

Mother claimed that she and the children went across the street to a fast food restaurant and they discussed the situation. Mother did not understand how SSA would have permitted Sister to have unsupervised visits with the children. She was concerned about the safety of the children because she believed both Sister and her boyfriend were drug users. Mother decided to take the children on the bus to visit Chr.B.

While Mother was talking with Chr.B. about keeping the children until the next court hearing in three days, she got a text message from Sister saying the foster parents were on their way to pick up the children. Sister asked when Mother planned to return to her room. Mother recalled that when the children realized she planned to keep them with her until the next court date, and was not going to return them to Sister’s motel room, A.B. tried to run away. Mother told A.B. he could not run away and she would find a way to return him to the foster home without going back to Sister’s home. She recalled, “they didn’t want to hear that” and refused to wait for Chr.B.’s husband to drive them to Sister’s house and wait with them until the foster parents arrived. Mother did not

want them to be at Sister's residence without supervision. She stated the children were being unreasonable and wanted to run away.

F.B. threatened Chr.B. she would call the police if anyone stopped her from leaving. Mother repeated her plan of letting them leave after Chr.B.'s husband was available to drive them. F.B. and A.B. began cursing and G.B. tried to stop them from leaving. After F.B. and A.B. ran out the door, G.B. was upset and crying. He asked Mother to go after them. She declined, explaining she did not have a car and she had a sore knee and could not chase them. Just as G.B. attempted to leave, F.B. and A.B. returned for him. G.B. agreed to go with them. The children then grabbed C.B., who started screaming. She did not want to go with them. Chr.B. tried to convince the children to stay. F.B. argued with Chr.B. and made her cry before she and the two boys fled, leaving C.B. behind. Mother claimed she tried to find them and asked Chr.B.'s husband to drive around and look for them. She stopped looking when Sister texted that F.B. contacted the foster home and they were going to pick her up. Mother claimed the social worker did not contact her about C.B. until Monday evening, right before she was arrested.

When counsel asked Mother if it would be in the children's best interests to return to her care she testified "yes," but that their return would not be in her own best interests. She explained that when the children were with her they were better with school and "everyone else" but they were disrespectful towards her. She stated they misbehaved and exhibited negative behavior at home.

On cross-examination, Mother stated she did not immediately call SSA after seeing drugs in Sister's home because she did "not think it would make any difference, considering it was the social worker saying they were allowed to be with [Sister] and her boyfriend." Mother claimed she later told the social worker about the drugs. Mother failed to appear for her continued testimony (cross-examination)

scheduled for February 7, 2019. She did not return her attorney's telephone calls. The court denied Mother's counsel's request for a continuance.

VI. *The Court's Ruling*

On February 8, 2019, the court sustained the supplemental section 387 petitions and removed the children from Mother's custody. The court sympathized with Mother for the loss of her child. The court stated it was mindful of the proposition it was not looking for perfect parents. It noted Mother indicated she was not interested in having the children returned to her until they changed their conduct. The court understood children were challenging, especially teenagers, "but what's exhibited here is something more profound, and there's a shifting of responsibility away from mother, an assignment of responsibility towards others." The court determined this shifting of responsibility was a common thread seen in Mother's testimony.

The court observed Mother's progress in therapy "in relationship to the problems [was] superficial at best." Mother had not addressed "the profound issues that have led to the extraordinary dysfunction that's presented in this case." The court stated poverty and homelessness were not relevant to the issue of good parenting. "Some of the most admirable parents . . . are parents who hold the families together despite poverty, deprivation, and do what is necessary . . . to hold that family together." The court determined the children in this case had led "chaotic and tempestuous" lives, and Mother had not done what was necessary to keep her family together, such as taking "a look deep inside herself, to provide her own self with the best tools that she can, . . . to address the issues that are pulling this family apart."

The court determined clear and convincing evidence supported application of section 361.5, subdivision (b)(15). It argued that the "notion of necessity and defense of others" was relevant in this case and considered by the court. The court concluded Mother's testimony about what transpired before the abduction was not credible. It also noted Mother's testimony she intended to return C.B. when she went to court lacked

credibility. While the court sympathized with Mother's hypothyroidism, it noted Mother testified she was aware of a problem "three days prior to the onset" of a bad flare-up. Despite having this warning period to take appropriate action, and shield her children from being exposed to her psychotic episodes, Mother did not "insulate" her children. The court also found a conflict between Mother's description of having a loving and warm relationship with the children and the evidence of "extensive chaos." In conclusion, the court ruled Mother failed to carry her burden of proving, notwithstanding the finding under section 361.5 subdivision (b), that reunification services would be appropriate. The court determined additional reunification services would not be in the children's best interests. It scheduled a permanency planning hearing. (§ 366.26.)

DISCUSSION

I. Applicable Law & Standard of Review

Generally, when a child is removed from parental custody under the dependency laws, the juvenile court is required to provide reunification services to "the child and the child's mother and statutorily presumed father" (§ 361.5, subd. (a).) The purpose of reunification efforts is to "eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) However, in certain statutorily enumerated situations, the Legislature has determined that such reunification efforts are likely to be fruitless and, thus, "the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*Ibid.*)

The statutory sections authorizing denial of reunification services are sometimes referred to as "bypass" provisions. (*Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, 821.) Once the juvenile court makes a finding bypassing reunification, it "fast-tracks" the dependent minor to permanency planning so that a permanent out-of-home placement can be developed. (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 838.)

Section 361.5, subdivision (b) lists 17 situations in which “reunification services are likely to be futile and need not be offered to a parent.” (*D.B. v. Superior Court* (2009) 171 Cal.App.4th 197, 202 (*D.B.*)). One of those exceptions arises when the court finds by clear and convincing evidence “[t]hat the parent or guardian has on one or more occasions willfully abducted the child or child’s sibling . . . from his or her placement and refused to disclose the child’s . . . whereabouts, refused to return physical custody of the child . . . to his or her placement, or refused to return physical custody of the child . . . to the social worker.” (§ 361.5, subd. (b)(15).)

We review an order denying reunification services for substantial evidence. (*D.F. v. Superior Court* (2015) 242 Cal.App.4th 664, 669.) We do not make credibility determinations or reweigh the evidence. (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242.) We view the evidence in the light most favorable to SSA, the prevailing party below, and “indulge all legitimate and reasonable inferences to uphold the [juvenile] court’s order.” (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419.)

II. Application

The parties focus on the technical aspects of the bypass provision, and debate whether Mother’s unsupervised time with the children at the fast food restaurant, and later with C.B. in Beverly Hills, qualified as an abduction as defined in section 361.5, subdivision (a). We conclude the more relevant question is whether the court could use the bypass provision 12 months into the dependency case, essentially avoiding the timelines and standards set forth in the statutory scheme. We have determined that while the bypass provision may be used to avoid the *start* of services, it was not intended to circumvent the system and processes afforded to families already receiving services.

When SSA first detained the children in October 2016, the court ordered reunification services for Mother. At the disposition hearing (delayed by continuances until April 2017), the court returned F.B., A.B., and C.B. to Mother under a plan of

family maintenance and ordered reunification services for G.B.⁴ At this disposition hearing, the court could have considered whether to apply any bypass provisions to “fast-track” the case directly to a permanency planning hearing. The court determined reunification services would not be futile in this case, as evidence by its order providing family maintenance and reunification services. (*D.B.*, *supra*, 171 Cal.App.4th at p. 202.)

We recognize SSA’s decision to re-detain the children in December 2017 resulted in the children being placed on separate reunification paths because only some of the children’s dependency cases had been terminated at that time. This divergence does not change our conclusion the bypass provision was inapplicable, but the facts do require a slightly different analysis which we will discuss separately below. With respect to all the children, we ultimately conclude the court’s decision to terminate services was correct for reasons other than application of the abduction bypass provision, using the correct standards of review.

A. G.B.’s Reunification Period Exceeded 24 Months

In December 2017, G.B., unlike his siblings, was residing with Mother under a family maintenance plan. Accordingly, after his detention SSA filed a supplemental section 387 petition to add allegations to the existing petition. “[T]he proceedings [did] not return to ““square one”” with regard to reunification efforts. [Citations.] A removal under section 387 does ‘not automatically trigger a new period of reunification services.’ [Citation.] The reason is rooted in ‘the state’s interest in assuring that minors whose parents cannot provide them with a stable home have another opportunity for such a home life within a reasonable time.’ [Citation.] Thus, when the court removed the children from Mother’s care based on the . . . section 387 petition, it did not trigger presumptive entitlement to a new series of reunification services for Mother under section 361.5, subdivision (a). And since Mother had no entitlement to

⁴ As stated earlier, Sister is now an adult and no longer subject to these dependency proceedings. We need not include her in our discussion of the appeal.

services under subdivision (a), it was not necessary for the court to make bypass findings with respect to these children under subdivision (b).” (*D.T. v. Superior Court* (2015) 241 Cal.App.4th 1017, 1035-1036 (*D.T.*).)

In other words, after the court found true the allegations in the supplemental section 387 petition, it would consider what *further* dispositional orders needed to be made. The reunification period with respect to G.B. was reaching the 16-month mark in February 2018 (when the court adjudicated the section 387 petition). The statutory scheme permitted the court to extend services up to a maximum period not to exceed 18 months from the date G.B. was originally removed from Mother’s physical custody. (§ 361.5, subd (a)(3)(A).)

We reject county counsel’s assertion the court had authority to consider the dispositional alternative of the bypass provision after adjudicating the section 387 petition. He cites California Rules of Court, rules 5.565(e)(1) and 5.695(g)(1). He does not provide any further legal analysis about why these rules would give the court authority to bypass services after providing 16 months of services simply because SSA filed a supplemental petition. We recognize California Rules of Court, rule 5.565(e)(1), provides *the procedures* relating to jurisdiction hearings for dependent children apply to the determination of the allegations of a supplemental petition. The *procedures* relating to disposition hearings also apply to the determination of further dispositional issues following adjudication of a supplemental petition. (Cal. Rules of Court, rule

5.565(e)(2).) However, rules adopting the same procedures would not necessarily transform the section 387 adjudication into a second disposition hearing.⁵

As aptly noted by one treatise, Seiser & Kumli, California Juvenile Court Practice and Procedure (2018) § 2.141[3], page 2-535 (hereafter Seiser), “[H]earings on a petition pursuant to . . . [section] 387 are post-dispositional hearings which do not necessarily involve allegations which would provide an additional basis for jurisdiction. As such, they are not jurisdiction[al] or disposition[al] hearings and should not be referred to as such. Instead, they only follow the procedures for such hearings which allow for the allegations in the petition to be adjudicated first and then, if found true, allow for the court determining *what further dispositional orders* need to be made.” (Italics added.) Thus, at the adjudication hearing, the sole issue was whether the allegations in the supplemental petition were true and required modification of a previous placement order.

⁵ California Rules of Court, rule 5.565 provides as follows: “(e) Requirement for bifurcated hearing [¶] The hearing on a subsequent or supplemental petition must be conducted as follows: [¶] (1) The procedures relating to jurisdiction hearings . . . apply to the determination of the allegations of a subsequent or supplemental petition. At the conclusion of the hearing on a subsequent petition the court must make a finding that the allegations of the petition are or are not true. . . . [¶] (2) The procedures relating to disposition hearings . . . apply to the determination of disposition on a subsequent or supplemental petition. If the court finds under a subsequent petition that the child is described by section 300(a), (d), or (e), the court must remove the child from the physical custody of the parent or guardian, if removal was not ordered under the previous disposition.”

California Rules of Court, rule 5.695 provides as follows: “(g) Provision of reunification services (§ 361.5) [¶] (1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5 [containing the 17 bypass provisions] if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child’s mother and statutorily presumed parent, or the child’s legal guardian, to facilitate reunification of the family as required in section 361.5.” County counsel does not explain why this rule supports its argument. The rule appears to simply restate the statute. We fail to see its relevance to the issue at hand.

In this case, the court determined removal from custody was unnecessary and returned G.B. to Mother's care under a CRISP release. And by following month, Mother was caring for G.B. under a plan of family maintenance services.

In early September 2018, SSA filed its second supplemental section 387 petition. The reunification period by this date had almost reached the 24-month mark. When the court adjudicated this supplemental petition at the end of January and in early February 2019, G.B.'s dependency case had been open for over 27 months. The statutory scheme did not authorize the court to extend reunification services past this point. (§ 361.5, subd. (a)(3)(A) [services "not to exceed 18 months"].)

"The 18-month hearing represents a critical juncture in dependency proceedings. [Citations.] At the 18-month hearing, "critical" decisions concerning parental rights are made. [Citations.] The Court of Appeal has held: "The Legislature has determined that the juvenile court must embrace or forsake family preservation at this point by circumscribing the court's options." [Citation.] The minor must either be returned to the physical custody of his or her parent or the court must terminate reunification services and set a hearing for the selection and implementation of a permanent plan.' [Citation.]" (*In re J.E.* (2016) 3 Cal.App.5th 557, 563-564 (*J.E.*)).

The court has limited discretion "under section 352 to continue the 18-month review hearing and extend reunification services up to 24 months upon a showing of good cause. [Citation.]" (*J.E., supra*, 3 Cal.App.5th 564.) This case does not fall into any of the recognized categories of good cause. (See *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1510 [extend services beyond the 18-month statutory period if court finds "extraordinary circumstances 'involv[ing] some external factor which prevented the parent from participating in the case plan'"]; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1016 [failure to provide reasonable reunification services]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792, 1796 [juvenile court has discretion "in a special needs case" to extend the reunification period].)

Sections 361.5, subdivision (a)(4) and 366.22, subdivision (b), extend services under section 352 up to 24 months to certain parents in substance abuse programs or recently discharged from incarceration or institutionalization. There is nothing to suggest these provisions apply in this case. With respect to G.B., we conclude the court properly concluded it was time to terminate reunification services and schedule a permanency planning hearing because the court lacked authority to extend reunification services any further.

B. F.B., A.B. & C.B. 's Reunification Near 18-Month Limit

These three children were on a different reunification track from G.B., because in October 2017 the court terminated their dependency case. When SSA re-detained the children and filed a new section 300 petition (Second Petition) in early December 2017, Mother was entitled to a new period of reunification services under section 361.5, subdivision (a). At this time, the court also had the authority to make bypass findings with respect to these children under subdivision (b) of section 361.5, but it did not. Instead, the court ordered services for Mother, and soon thereafter, ordered that the children would be returned to Mother's care under a CRISP release.

For reasons explained in more detail above, SSA's September 2018 supplemental 387 petition regarding these minors did not reset the reunification clock. (*D.T., supra*, 241 Cal.App.4th at pp. 1035-1036.) The dependency proceedings were approaching the one-year mark.

By February 2019 (when the court adjudicated the supplemental 387 petition), Mother had the benefit of nearly 15 months of reunification services since the Second Petition. Due to multiple continuances, the court viewed the trial as a six-month review hearing on the Second Petition, in addition to an adjudication of the section 387 petition. However, the review hearing was actually being heard over 15 months from the date the children were originally removed. Courts must use a more heightened standard regarding reunification services when the case reaches the 12-month statutory limit, as

opposed to a six-month review. (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845 (*Tonya M.*).

In light of the above, we conclude the court had three distinct issues to decide following the trial. First, whether the allegations in the supplemental petition were true. Second, did the court need to make *further dispositional orders* if the allegations were true? Third, what standard should be applied in considering additional reunification services at a six-month review hearing being held near the 15th month of reunification services?

In this case, the court clearly addressed the first two issues. It determined the allegations in the supplemental petition, including the allegation Mother abducted the children, were true. It made the dispositional order that a change in custody was required, and the children could no longer remain in Mother's custody under a plan of family maintenance. The children were placed in foster care and group homes.

Rather than directly reaching the third issue of whether continued reunification services would be appropriate after 12 months of services, according to the operable standard set forth in section 366.21, subdivisions (e) and (g)(1), the court determined evidence of an attempted abduction was a valid reason to terminate *further* reunification services. We agree the abduction was relevant to the issue of whether to continue services, but the time had long passed for the court to utilize the bypass provisions.

As mentioned earlier, the 17 statutory bypass provisions provide courts with a means to streamline the dependency process in futile cases. The Legislature recognized the need to fast-track a dependent minor to dependency planning if a court could make statutorily specified findings related to parental disabilities and other parenting malfeasances. (§ 361.5, subd. (b).) These bypass provisions reflected a legislative assumption that offering services in futile cases would be an unwise use of government resources. However, after a court determines reunification services are

appropriate, and the government has invested time and resources towards the goal of reunification, the Legislature designed a dependency scheme with “three corresponding distinct escalating standards for the provision of reunification services to parents” as the case progresses. (*Tonya M.*, *supra*, 42 Cal.4th at p. 845.) This statutory scheme provides specific procedures and timelines for reviewing, extending, and terminating services. The bypass provision cannot be used to avoid this important process once it has begun.

In a typical case, after the court has determined at the disposition hearing to remove the children and accepted the recommended plan for family reunification, “[t]he child’s status, and the question whether services should be extended for an additional period, must be reconsidered no less frequently than every six months. [Citation.]” (*Tonya M.*, *supra*, 42 Cal.4th at p. 843, citing *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009 (*Sara M.*)). “The absolute maximum period for services is 18 months (§ 361.5, subd. (a)), provided the court determines at both a six-month review hearing and a 12-month review hearing that continuation of services is warranted (see § 366.21, subd. (e) [establishing procedures for the six-month review hearing]; *id.*, subds. (f), (g) [establishing procedures for the 12-month review hearing]).” (*Ibid.*) Each of these hearings has a different standards for the continued provision of services.

Section 366.21, subdivision (e), governs the initial six-month review hearing. Services are generally presumed and there are only a few circumstances, not applicable here, under which the court can terminate reunification efforts. (E.g., *Sara M.*, *supra*, 36 Cal.4th at p. 1017 [terminate services if the parent failed to contact or visit the child].) During the second reunification period, which typically runs from the six-month review hearing to the 12-month review hearing (§ 366.21, subd. (f)) “a heightened showing is required to continue services.” (*Tonya M.*, *supra*, 42 Cal.4th at p. 845.) “So long as reasonable services have in fact been provided, the juvenile court must find ‘a substantial probability’ that the child *may* be safely returned to the parent within six months in order to continue services. (§ 366.21, subd. (e).)” (*Ibid.*, italics added.)

During the final period, the standard changes to whether the child “*will*” be reunited within six months (by the 18-month review) in order to continue services. (§ 366.21, subd. (g)(1).) “The effect of these shifting standards is to make services during these three periods first presumed, then possible, then disfavored.” (*Tonya M.*, *supra*, 42 Cal.4th at p. 845.)

At each step, the juvenile court must consider services in the context of “probable developments in the period for which the services can be ordered. That is, the period for which services can be ordered and the period for which the impact of those services is to be prospectively evaluated should be coterminous.” (*Tonya M.*, *supra*, 42 Cal.4th at p. 846.) In this case, the court held the review hearing 15 months into the dependency proceedings. Only three months remained until the next review hearing (the 12-month hearing, by virtue of the passage of time, would merge into the 18-month hearing). Consequently, at most only three months of services could by law be ordered by the juvenile court. At this juncture, the court could not continue services unless it found there was a substantial probability that the children would be safely returned to Mother within three months (the only time remaining in the 18-month limit). “In deciding whether to extend services, a juvenile court should consider only whether, if those services were provided, reunification would be sufficiently probable according to the operable standard (§ 366.21, subds. (e), (g)(1)) between then and the next review hearing.” (*Id.* at p. 848.)

In order to find a substantial probability that the child will be returned to the physical custody of his or her parent and safely maintained in the parent’s care within the extended time, the court must find the parent: (1) regularly visited the child; (2) made significant progress in resolving the problem prompting removal of the child; and (3) demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child’s safety, protection and well-being. (§ 366.21, subd. (g)(1).) We

review a juvenile court's order terminating reunification services for substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.)

Although visitation was not an issue in the case, there was substantial evidence Mother had made only minimal progress in resolving the problem prompting removal of her children. As noted by the juvenile court at the end of trial, Mother refused to take personal responsibility for her actions and historically shifted the blame to others. The court observed Mother's progress in therapy was "superficial at best" given the severity of her psychotic breakdowns. There was no indication Mother had taken any steps to address whatever was triggering the severe and recurrent psychotic episodes. She tended to blame the incidents entirely on thyroid dysfunction, yet she refused to take prescribed thyroid medication, seek preventative treatment, or to consider alternative causes. Mother's unwillingness to address her mental issues meant she could not insulate the children from exposure to "extraordinary dysfunction."

We agree, finding substantial evidence supports the court's order terminating services. Looking at all of SSA's reports, dating back to the court's first contacts with the family over two years ago, there is a recurrent theme; Mother's otherwise warm and loving relationship with her children is always overshadowed by the chaos and neglectful environment created by living with a parent suffering from an untreated mental illness. As aptly surmised by the social worker in 2016, the children needed protection of the court because Mother appeared normal but was suffering from "an undiagnosed condition which manifest[ed] itself in transitory psychotic episodes when under stress or due to lack of sleep." Medical reports later hypothesized Mother's thyroid hormone imbalances were likely being exacerbated by substance abuse or a "psychiatric disease." However, neither SSA, nor Mother, could determine how to prevent future psychotic episodes, in part, because of Mother's non-compliance with services. The reports documented Mother repeatedly refused to enroll in drug testing, parenting classes, and therapy. She ignored SSA's request, and the court's order, to

undergo a section 730 mental health evaluation. As a result, there was inadequate documentation on the issue of whether Mother's behavior was due to her physical health, mental health, drug usage, or some combination of these problems. Mother's unwillingness to cooperate with SSA or doctors to diagnose her condition, placed her children at risk for future harm if left permanently in her care.

Like the juvenile court, we found concerning Mother's testimony that she was not interested in having the children returned to her unless their behavior improved. She voiced similar sentiments throughout these dependency proceedings. In the beginning, she habitually sent unruly G.B. to stay with his abusive father because she determined the boy was "like" his father. She sometimes asked SSA to place only the younger children in her care because the older children were difficult to manage. Mother often blamed the children, rather than herself, for the family's dire situation. As aptly stated by the trial court, these children lived "chaotic and tempestuous" lives, which was pulling the family apart and Mother appeared unwilling to do what was necessary for reunification.

In addition, the juvenile court's conclusion additional services would be futile after the abduction were relevant to a section 366.21, subdivision (g) analysis (regardless of the unavailability of the bypass provision). This incident certainly reflected a high level of irresponsible and imprudent parenting. It was not in C.B.'s best interests to be taken from her foster home and miss school for even a few days, especially with a parent having an unstable mental history, requiring intermittent section 5150 holds. Just two months prior to the abduction, Mother abandoned C.B. at a car dealership. Due to Mother's "extremely fragile state," she required hospitalization under a section 5150 hold. Evidence of the recent psychotic episodes, Mother's minimal progress with her case plan, and untreated mental issues, all support the conclusion Mother lacked the ability to complete the case plan's objective and provide for her

children's protection and well-being. In light of Mother's admission she did not want the children returned unless *they were better behaved*, there is nothing suggesting three more months of services would be sufficient to achieve the goal of family reunification.

We conclude substantial evidence supports the juvenile court's order terminating services. The children would not be returned to Mother's custody before the 18-month mark even if the court ordered continued services.

DISPOSITION

We deny the writ petition.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.